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File No. O. Transfer of Prisoners 52
Legal Department-
A **BRANCH** p 6(12)

Subject:—

opinions under the

Transfer of Prisoners Act,

1950

File No. 8 Transfer of Prisoners/52

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Notice of No. R.L.A.

Transfer of Prisoners to Hyderabad- Transfer of prisoners Act, 1950.

It is not clear from the Additional D.M.'s letter what procedure is followed in the Sholapur District in transferring prisioners to the Hyderabad State to stand their trial before a Court of that State. Sections 25 of the Cr.P.C. which is referred to by him is obviously a mistake. The privisions of the Extradition Act are no longer necessary nor operative for such transfer; nor can the transfer be effected under the Prisoners Act, 1900, which does not now provide for transfer of prisoners from one State to another. In order to facilitate transfer from one State to another Government have enacted the Transfer of Prisoners Act,1950 Under the Transfer of Prisoners Act, 1950(ActXXII of 1950), which extends to the whole of India except the state of Jammu and Kashmir; a specific provision is now made for transfer of prisoners from one State to another. Section 3 of that Act enacts that where any persion is confined in a prison in a State,-

(a) under sentence of death, or

(b) under, or in lieu of a sentence of imprisionment or transporation, or

(c) in default of pyment of a fine, or

(d) in default of giving security for keeping the peace or for maintaining good behaviours,

the Government of the State may, with the consent of the Government of any other State, by order, provide for the removal of the prisoner from that prison to any prison in the other State. Under these provisions a transfer can be effected and when such a transfer is made, in the absence of any order under section401 Cr.P.C. suspending his sentence, (and such an order is not necessary), the prisoner would be deemd to be undergoing his sentence during his absence from the original prision(vide R.L.A.'s opinion No.1382 dated 19-4-1927 followed in R.L.A.'s opinion No, 3731 dated 22-5-1943;

and.....

P.T.O.

and also Rule 402 with readx with foot note(f)of the jail Manual). It may be noted, however, that transfer under the Act would have to be made under orders of Government and with the consent of the State to which the prisoner is transferred. From the Additional D.M.'s letter, it does not appear that the transfer is effected in this manner, In the circumstance, it would be desirable to ascetain from him the exact procedure that is followed in the District before any reply is given.

Sd/- .

(R.L.M.signed the F.C.)

Remembrancer of Legal Affairs.

U.R.to H.D.No. 8431,dated the 20th May 1952.

M.ED.
18-6-56
C.4

Office of the R.L.A.

Transfer of Prisoner.

Transfer of Prisoners Act. 1950. Section 3.

Presumably the prisoner in this case was sent to Bombay by transfer by the Government of Mysore. Such a transfer is permissible under section 3 of the Transfer of Prisoners Act.1950 (Act No XXIX of 1950) which applies tox the whole of India except the State of Jammu and Kashmir. Whether the prisioner is to be sent back or to be kept in a prison in Bombay will depend upon the terms of the transfer. If according to these terms, the transfer was only for the purposes of the appeal, the prisoner will have to be sent back to the State of Mysore. If he is to be continued here it can be done only at the instance of the Government of the State of Mysore and with the consent of the Government of the State of Bombay as laid down insection 3 of the above Act.

Sd/-
17-11

Remembrancer of Legal Affairs.

U.R.to H.D.No. 19207/A dated the 18th November 1952.

Submitted.

It appears that the District Magistrate,Dharwar had requested the Govt. of Mysore to produce Shri Rama Laxmappa and five others who are undergoing imprisonment in the Mysore State Jail before the Resident Magistrate, F.C.,Haveri to answer certain charges. In reply to this request the Mysore Govt. asked the the Bombay Govt.tox make the formal requisition along with the records of the case in order to enable that Govt. to consider their extradition under the Mysore Extradition Act.H.D. considered that extradition was unnecessary as the Criminal Procedure Code was applied to part B States including the Mysore State and in informing that State accordingly added that if that Govt. agreed the D.M., Dharwar will be asked to move the Govt. of Mysore through the High Court, Bombay for the production of the prisoners as required by sec. 40 of the Prisoners Act,1900. The Mysore Govthowever,replied that as the Prisoners Act,1900, has not been extended to Part B states there would be no legal basis for surrender of a person undergoing imprisonment in a State jail except under sec.12of the Mysore Extradition Act which is still in force. That Govt. also informed that extension of the Criminal producure Code renders extradition proceedings unnecessary only in the case of fugitive offenders not undergoing sentence ina jail. H.D,now considers that possibly transfer can be effected in this case under the provisions of theTransfer of Prisoners Act, 1950; but R.L.A. is requested to advise. If R.L.A. holds that the Act will not apply, then he is requested to state whether extradition proceedings would be necessary in the present case.

P.To

2. No extradition would be necessary in the present case. The transfer of Prisoners Act(XXIX of 1950)which was enacted to facilitate transfer of Prisoners from Parts A,C,andD states to Part B State and vice versa will be useful in this case and Govt. of Mosyre may be requested to transfer the prisoners in question to a prison in Bombay State in order to enable them to stand their trial before the Resident Magistrate,Haveri.

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D.S.(Cr.) Sd/-
21-11

R.L.A. Sd/-
21-11

U.R.# to H.D.M. No.19638/A dt 28-11-52.

MR.D.
18-8-56
C.4